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G-48,481  
TCB  
(Douglass, Sam vs.)

December 28, 1992

RECORDATION 120 18057 FILED 1425

DEC 30 1992 9:50 PM

Secretary  
Interstate Commerce Commission  
Recordation Room #2303  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION BY FEDERAL EXPRESS

Dear Secretary:

I have enclosed an original and one copy/counterpart (with an affidavit attached thereto) of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is a Security Agreement-Tank Car, a primary document dated December 28, 1992.

The names and addresses of the parties to the documents are as follows:

Debtor:

Nolan Lehmann  
11335 Bassdale Drive  
Houston, Texas 77070

Secured Party:

Texas Commerce Bank National Association  
712 Main Street  
Houston, Texas 77002

A description of the equipment covered by the document follows:

Two (2) 32,700 gallon nominal capacity dual diameter pressurized tank cars, DOT 112J1340W, exterior coiled and insulated, with 100-ton roller bearing trucks, and bearing

18057

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-2-

2-365A005 December 28, 1992

INTERSTATE COMMERCE COMMISSION

Association of American Railroads reporting marks GLNX  
34205 and 32007.

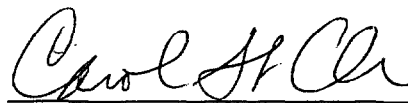
A fee of \$16.00 is enclosed. Please return in the enclosed Federal Express envelope the original and any extra copies not needed by the Commission for recordation to:

Carol St. Clair, Esq.  
C/O Baker & Botts  
3000 One Shell Plaza  
910 Louisiana  
Houston, Texas 77002

A short summary of the document to appear in the index follows:

Security Agreement-Tank Car between Nolan Lehmann and Texas Commerce Bank National Association, dated December 28, 1992, and covering two (2) 32,700 gallon nominal capacity dual diameter pressurized tank cars, DOT 112J1340W, exterior coiled and insulated, with 100-ton roller bearing trucks, and bearing Association of American Railroads reporting marks GLNX 34205 and 32007.

Very truly yours,



Carol St. Clair, counsel for Texas  
Commerce Bank National Association

:2064  
Enclosures

DEC 30 9 45 AM '92  
NOTED BY: [illegible]

Interstate Commerce Commission  
Washington, D.C. 20423

12/92

12/30/92

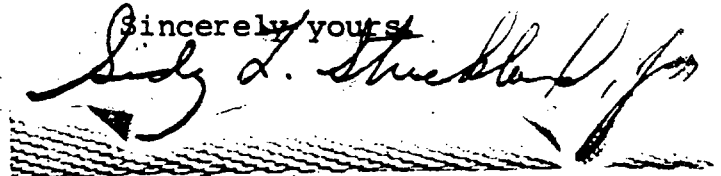
OFFICE OF THE SECRETARY

Carol St. Clair, Esq.  
C/O Baker & Botts  
3000 One Shell Plaza  
910 Louisiana  
Houston, Texas 77002

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/30/92 at 9:50am, and assigned re-recording number(s). 18057 & 18058

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

DEC 30 1992 - 9 50 AM

INTERSTATE COMMERCE COMMISSION

# **TEXAS COMMERCE BANK NATIONAL ASSOCIATION SECURITY AGREEMENT -- TANK CAR**

NOLAN LEHMANN, 11335 Bassdale Drive, Houston, Texas, 77070 (hereinafter called "Debtor"), and TEXAS COMMERCE BANK NATIONAL ASSOCIATION, 712 Main Street, P. O. Box 2558, Houston, Harris County, Texas 77252-2558 (hereinafter called "Secured Party") agree as follows:

## **SECTION I. CREATION OF SECURITY INTEREST**

In order to secure the prompt and unconditional payment of the indebtedness herein referred to and the performance of the obligations, covenants, agreements and undertakings of Debtor herein described, Debtor hereby pledges, grants a security interest in, mortgages, assigns, transfers, delivers, sets over and confirms unto Secured Party all right, title and interest of Debtor in and to the following (collectively, the "Collateral"): (i) the two 32,700 gallon nominal capacity dual diameter pressurized tank cars, DOT 112J1340W, exterior coiled and insulated, with 100-ton roller bearing trucks, and bearing Association of American Railroads reporting marks GLNX 34205 and 32007 (the "Equipment"), (ii) all additions and accessions to the Equipment, and (iii) all rights to receive and collect all rentals, liquidated damages, proceeds of sale, all per diem mileage or other payments now or hereafter to become payable under leases permitted hereby or with respect to the Equipment and all accounts, chattel paper, and general intangibles with respect thereto, including, without limitation, all right, title, and interest of Debtor in and to the Management Agreement between Debtor and GLNX Corporation ("GLNX") dated October 1, 1989, as amended ("Management Agreement"). The inclusion of proceeds in this Security Agreement does not authorize Debtor to sell, dispose of or otherwise use the Equipment in any manner not specifically authorized by this Security Agreement.

## **SECTION II. SECURED INDEBTEDNESS.**

This Security Agreement-Tank Car (hereinafter called this "Agreement" or this "Security Agreement") is made to secure and enforce the payment and performance of (a) all debts, obligations and liabilities of every kind and character of Debtor now or hereafter existing in favor of Secured Party under (i) that certain Promissory Note dated December 28, 1992 executed by Debtor and payable to the order of Secured Party in the original principal amount of \$127,551 (the "Note") and (ii) that certain Guaranty Agreement dated December 28, 1992, executed by Debtor, Leonard L. Voyles, Jr., John P. Wade and Tom S. Tucker (collectively, the "Guarantors") for the benefit of Secured Party (the "Guaranty Agreement"), whether such debts, obligations, or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and all modifications, renewals or extensions of or substitutions for, any of the foregoing and (b) all obligations of Debtor contained

herein, in each case, whether for principal, fees, interest, expenses or otherwise. All such indebtedness is hereafter sometimes called the "secured indebtedness" or the "indebtedness secured hereby".

### SECTION III. DEBTOR'S REPRESENTATIONS AND WARRANTIES.

Debtor represents, warrants and covenants that:

- 3.1 Debtor is now in a solvent condition and no bankruptcy or insolvency proceedings are pending or contemplated by or against Debtor.
- 3.2 All information, reports, statements, and other data furnished by or on behalf of Debtor to Secured Party prior to, contemporaneously with or subsequent to the execution of this Agreement or in connection with the indebtedness secured hereby are true, correct and complete and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading.
- 3.3 Debtor owns the Collateral and has good right and authority to pledge the same and to transfer any interest therein.
- 3.4 The Collateral is free and clear from all security interests, assignments and encumbrances except the security interest evidenced hereby and the rights of GLNX under the Management Agreement and there is no financing statement, chattel mortgage or security agreement covering any interest of any kind in the Collateral or its proceeds on file in any public office.
- 3.5 The execution, delivery and performance of this Agreement and all other instruments now or hereafter evidencing or securing the indebtedness secured hereby: (a) do not and will not contravene or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect and applicable to Debtor and (b) do not and will not contravene, result in a breach of or constitute a default (with or without the giving of notice or the lapse of time or both) under any indenture, or any loan or credit agreement, contract, undertaking or other agreement to which Debtor is a party or by which Debtor or any of Debtor's property may be bound or affected.
- 3.6 No authorization, consent, approval, license, order or exemption of, or filing or registration with, any person, including, without limitation, any court or government department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary for (a) the valid execution, delivery or performance by Debtor of this Agreement; (b) the pledge and assignment of the Collateral pursuant to this Agreement and the

granting of the security interest set forth herein; or (c) the exercise by Secured Party of the rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement.

- 3.7 No representation or warranty contained herein or made by Debtor in connection with the indebtedness secured hereby, and no certificate, schedule or other document furnished by Debtor in connection herewith, contains or will contain, at the time so made or furnished, a misstatement of material fact, or omits or will omit to state a material fact required to be stated herein or therein in order to make the statements contained herein or therein not misleading.
- 3.8 Except for the fact that Debtor is an individually named defendant in the pending Tubular Corporation of America litigation which is described in Exhibit B to the Douglass Affidavit (as defined in the Settlement Agreement pursuant to which this Agreement is being executed and delivered), there is no judicial or administrative action, suit or proceeding pending or threatened against or affecting Debtor or the Collateral.
- 3.9 This Agreement and all other instruments securing the indebtedness secured hereby constitute the legal, valid and binding obligations of Debtor enforceable in accordance with their terms.
- 3.10 Debtor will warrant and forever defend the title to the Collateral against the claims of all persons whomsoever claiming or to claim the same or any part thereof.
- 3.11 The pledge and assignment of the Collateral pursuant to this Agreement creates a valid first priority security interest in the Collateral securing the payment of the secured indebtedness.
- 3.12 The Collateral is genuine, free from any restriction on transfer, fully paid, free of all liens, claims, demands, equities or other security interests, and is hereby duly and validly pledged or hypothecated to Secured Party in accordance with law.
- 3.13 Debtor has not sold, granted any option with respect to, assigned, transferred or otherwise disposed of any of its rights or interests in or to the Collateral except pursuant to this Agreement.
- 3.14 Except to the extent the consent of GLNX may be required for the assignment to Secured Party of Debtor's rights under the Management Agreement, the Debtor's execution, delivery and performance of this Agreement and compliance with the terms and provisions hereof will not

conflict with or result in a breach of or default under, or require any consent under, any applicable law, governmental requirement or regulation or any order, writ, injunction or decree of any court or governmental authority or agency, or any material agreement to which Debtor is a party or by which he is bound or to which he is subject or result in the creation or imposition of any lien upon any of the revenues or properties of Debtor pursuant to the terms of any such agreement.

#### SECTION IV. DEBTOR'S COVENANTS

So long as the indebtedness secured hereby or any part thereof remains unpaid, Debtor covenants and agrees with Secured Party as follows:

- 4.1 Debtor will make prompt payment, as the same becomes due, of all indebtedness secured hereby in accordance with the terms and provisions of the agreements and instruments evidencing such indebtedness.
- 4.2 Debtor will pay promptly all income, franchise and other taxes owing by Debtor and any stamp taxes which may be required to be paid with respect to this Agreement or any other agreement or instrument now or hereafter evidencing or securing any of the secured indebtedness.
- 4.3 Debtor will cause to be paid prior to delinquency all taxes, charges, liens and assessments heretofore or hereafter levied or assessed against the Collateral, or any part thereof, or against Secured Party for or on account of the indebtedness secured hereby or the interest created by this Agreement, and will furnish Secured Party with receipts or other satisfactory evidence showing payment of such taxes and assessments at least ten (10) days prior to the applicable default date therefor.
- 4.4 If the validity or priority of this Agreement or of any rights, titles, security interests or other interests created or evidenced hereby shall be attacked, endangered or questioned or if any legal proceedings are instituted against Debtor with respect thereto, Debtor will give prompt written notice thereof to Secured Party and at Debtor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, and Secured Party (whether or not named as a party to legal proceedings with respect thereto) is hereby authorized and empowered to take such additional steps as in its sole judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Agreement and the rights, titles, security interest and other interests created or evidenced hereby, and all expenses so incurred by Secured Party of every kind and character shall be a demand obligation owing by

Debtor to Secured Party and, to the extent not prohibited by law, shall bear interest from the date of expenditure by Secured Party until paid at the same rate provided for past-due principal and interest in the principal obligation (the "Past Due Rate") and shall be a part of the secured indebtedness. For purposes of determining the Past Due Rate, the principal obligation shall be (a) the note secured hereby; (b) if more than one note is secured hereby, the note with the largest face amount; and (c) if no note is secured hereby, the obligation with the largest face amount. The party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

- 4.5 Debtor authorizes Secured Party to file financing statements (Form UCC-1) and other security documents executed by Debtor in such offices and locations as are necessary in the opinion of Secured Party to perfect the security interests granted herein. Debtor will, on request of Secured Party, (a) promptly correct any defect, error or omission which may be discovered in the contents of this Agreement or in any other instrument executed in connection herewith or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further security agreements, financing statements and continuation statements) and do all such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Agreement and such other instruments, and to subject to the security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the then Collateral; (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Secured Party to protect the rights of Secured Party hereunder against the rights or interests of third persons, and (d) do, make, procure, execute and deliver all acts, things, writings and assurances as Secured Party may at any time require to protect, assure or enforce the interests, rights and remedies of Secured Party created by, provided in or emanating from this Agreement.
- 4.6 Notwithstanding the security interest in proceeds granted herein, Debtor will not endorse, lend, exchange, sell, transfer, assign or otherwise dispose of all or any part of the Collateral or any interest therein or permit the title to the Collateral, or any interest therein, to be vested in any other party, in any manner whatsoever, by operation of law or otherwise, except as authorized in this Agreement or in writing by Secured Party, and Debtor will keep the Collateral, including the proceeds thereof, free from unpaid charges, including taxes, and from liens, encumbrances and security interests other than those in favor of Secured Party.



- 4.7 To the extent not prohibited by law, Debtor will pay, or reimburse Secured Party for, all costs and expenses, of every character, incurred or expended from time to time (including, but not limited to, the fees and expenses of counsel for Secured Party) in connection with the collection and enforcement of the indebtedness secured hereby and any and all stamp, mortgage and recording taxes. Debtor will reimburse Secured Party for all amounts expended by Secured Party to satisfy any obligation of Debtor under this Agreement or to protect the Collateral. In addition, whether or not an Event of Default shall have occurred, Debtor will pay, or reimburse Secured Party for, all costs and expenses (including, but not limited to, the fees and expenses of counsel for Secured Party) of every character incurred or expended from time to time in connection with the exercise by Secured Party of any of its rights and remedies hereunder or at law. Any amount to be paid or reimbursed by Debtor to Secured Party shall be a demand obligation owing by Debtor to Secured Party and, to the extent not prohibited by law, shall bear interest from the date of expenditure by Secured Party until paid at the Past Due Rate, and shall be a part of the secured indebtedness.
- 4.8 Debtor shall account fully and faithfully for and, if Secured Party so elects, shall promptly pay or turn over to Secured Party the proceeds in whatever form received from disposition in any manner of any of the Collateral (other than before the occurrence of an Event of Default, rentals from the Equipment), whether the indebtedness secured hereby is mature or not, the order and method of application to be in the sole discretion of Secured Party, except as otherwise specifically authorized herein. Debtor shall at all times keep the Collateral and its proceeds separate and distinct from other property of Debtor and shall keep accurate and complete records of the Collateral and its proceeds.
- 4.9 Debtor will not change his address, location, name or identity, without notifying Secured Party of such change in writing at least thirty (30) days prior to the effective date of such change.
- 4.10 Debtor shall furnish Secured Party all such information as Secured Party may request with respect to the Collateral.
- 4.11 If Debtor shall fail to perform any act or take any action which Debtor is required to perform or take hereunder, or to pay any money which Debtor is required to pay hereunder, Secured Party, in Debtor's name or in its own name, may but shall not be obligated to perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Secured Party and any money so paid by Secured Party shall be a demand obligation owing by Debtor to Secured Party and Secured Party, upon making

such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment.

- 4.12 Any amounts due and owing by Debtor to Secured Party pursuant to this Agreement shall bear interest from the date of expenditure by Secured Party until paid by Debtor at the Past Due Rate and shall be a part of the secured indebtedness and shall be secured by this Agreement and by any other instrument now or hereafter securing the secured indebtedness.
- 4.13 Debtor shall notify Secured Party promptly of (a) any lien, security interest, encumbrance or claim made or asserted against any of the Collateral; (b) any material change in the composition of the Collateral; and (c) the occurrence of any other event that could have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereunder.
- 4.14 Debtor shall indemnify and hold harmless Secured Party from and against, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against or incurred or paid by it by reason of, on account of or in connection with this Agreement (including, without limitation, enforcement of this Agreement) or any other agreement or instrument now or hereafter securing the payment of the secured indebtedness (collectively, the "Indemnified Liabilities") to the extent that the Indemnified Liabilities arise out of or by reason of claims made by persons or entities other than Secured Party, except claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses resulting from the gross negligence or willful misconduct of Secured Party; provided that it is the express intention of Debtor to indemnify Secured Party for the consequences of its own negligence.
- 4.15 Debtor will have and maintain or cause to be maintained at all times insurance with respect to the Equipment covering physical loss or damage from any cause whatsoever (subject to such exclusions as are standard in such insurance of the type generally in use), in the amount of at least equal to its commercial fair market value, with combined, single limit general liability insurance of at least \$5,000,000. Such insurance shall be written by financially sound companies, and the insurance policies shall also contain a standard mortgagee's endorsement providing for payment of any loss to Secured Party. All policies of insurance shall provide for at least ten days' written cancellation notice to Secured Party. All drafts or instruments of any kind evidencing payment under any such insurance policies which come into the possession of Debtor shall be immediately delivered to Secured Party. No such policies shall be payable to any party other than Secured Party and Debtor. Debtor shall furnish Secured Party with certificates or other evidence

satisfactory to Secured Party of compliance with the foregoing provisions and requirements. Secured Party may act as attorney-in-fact for Debtor in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts drawn by insurers of the Collateral and shall apply any proceeds of such insurance which may be received by it in payment on account of the Obligations secured hereby, whether due or not. Secured Party shall have the right to collect, and Debtor hereby assigns to Secured Party, any and all amounts that may become payable under any such policies of insurance by reason of damage to, or loss or destruction of the Collateral or any part thereof, and thereafter Secured Party shall apply all such amounts or any part thereof toward the payment of the Obligations in accordance with Article VI herein, whether or not such Obligations are then due and payable, and shall deliver to Debtor the balance, if any, remaining after payment in full of all Obligations.

#### 4.16 The Equipment.

- (a) The Equipment will be used primarily for business use and for leasing by GLNX pursuant to the Management Agreement, to responsible and credit-worthy third parties, unless Secured Party consents in writing to another use.
- (b) The Equipment will not be misused or abused, wasted or allowed to deteriorate, except for the ordinary wear and tear of its intended primary use as described in Section 4.16(a) above, and will not be used in violation of any statute or ordinance or as part of a unit-train.
- (c) The Equipment will not be sold, transferred or disposed of by Debtor or be subjected to any unpaid charge, including rent and taxes, or to any subsequent interest of a third person voluntarily created or suffered by Debtor, except the Management Agreement and leases referenced in Section 4.16(a) above, unless Secured Party consents in advance in writing to such sale, transfer, disposition, charge, or subsequent interest.

### SECTION V. EVENTS OF DEFAULT.

Debtor shall be in default under this Agreement upon the occurrence of any of the following events or conditions (herein called an "Event of Default"):

- 5.1 All obligations due and owing to the Secured Party under the Guaranty Agreement shall not have been performed or satisfied by one or more of the Guarantors; or
- 5.2 Debtor fails to pay when due any of the secured indebtedness relating to the Note; or

- 5.3 Debtor defaults in the punctual and complete performance of any of the obligations, covenants, terms or provisions contained or referred to in this Agreement or in any other agreement or instrument now or hereafter evidencing, securing or guaranteeing the indebtedness secured hereby; or
- 5.4 Any warranty, representation or statement contained in this Agreement or the Guaranty Agreement or made or furnished to Secured Party by or on behalf of Debtor or any Guarantor in connection with this Agreement or the Guaranty or any other instrument now or hereafter evidencing, securing or guaranteeing the indebtedness secured hereby, shall prove to have been false or misleading in any respect when made or furnished; or
- 5.5 The loss, theft, substantial damage, destruction, unauthorized sale, encumbrance or abandonment of or to any property now or hereafter covered by this Agreement or any other instrument or agreement now or hereafter securing the indebtedness secured hereby, or the making of any levy, seizure or attachment of or on any such property; or
- 5.6 Debtor shall make a general assignment for the benefit of creditors or shall petition or apply to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the business, estate or assets or of any substantial part of the business, estate or assets of Debtor or shall commence any proceeding relating to Debtor under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or
- 5.7 Any such petition or application shall be filed or any such proceeding shall be commenced against Debtor and Debtor by any act shall indicate approval thereof, consent thereto or acquiescence therein, or an order shall be entered appointing any such custodian, trustee, receiver or liquidator of all or any substantial part of the business, estate or assets of Debtor, or granting relief or approving the petition in any such proceeding, and such order shall remain in effect for more than thirty (30) days; or
- 5.8 Debtor shall fail generally to pay his debts as they become due, or suffer any writ of attachment or execution or any similar process to be issued or levied against him or substantially all of his property which is not released, stayed, bonded or vacated within thirty (30) days after its issue or levy; or
- 5.9 Debtor or any other party claims, or any court finds or rules, that Secured Party does not have a valid security interest as provided for herein on any security which may have been provided by Debtor; or

- 5.10 Debtor shall have concealed, removed or permitted to be concealed or removed, any part of his property, with intent to hinder, delay or defraud his creditors or any of them, or made or suffered a transfer of any of his property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer at a time when other creditors similarly situated have not been paid; or shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

## SECTION VI. SECURED PARTY'S RIGHTS AND REMEDIES.

- 6.1 This Agreement, Secured Party's rights hereunder or the indebtedness secured hereby may be assigned from time to time, and in any such case the assignee shall be entitled to all of the rights, privileges and remedies granted in this Agreement to Secured Party. In the event of any such assignment Debtor will assert no claims or defenses it may have against the assignee except those granted in this Agreement.
- 6.2 Upon the occurrence of an Event of Default and at any time thereafter:
- (a) Secured Party may, without notice to any person, including but not limited to, notice of dishonor or default, notice of intention to accelerate, notice of acceleration, protest and notice of protest, all of which are WAIVED, declare all indebtedness secured hereby, principal and accrued interest, to be immediately due and payable; and
  - (b) Secured Party may without notice, except as hereinafter provided, convert the Collateral to cash or sell the Collateral or any part thereof at public or private sale or at any broker's board or on any securities exchange for cash, upon credit, or for future delivery, and at such price or prices as Secured Party may deem best, and Secured Party may be the purchaser of any and all of the Collateral so sold and may apply upon the purchase price therefor any indebtedness secured hereby or any part thereof, in such manner and order as Secured Party may in its sole discretion elect, and thereafter hold the same absolutely free from any right or claim of whatsoever kind. Upon any such sale, Secured Party shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law or statute now existing or hereafter adopted. Secured Party shall mail written notice to Debtor at the address set forth herein ten (10) days prior to the date of public sale of Collateral or prior to the date after which private sale of the Collateral will

be made (which notice shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Secured Party's intention to make any such public or private sale. Such notice, in case of public sale, shall state the time and place fixed for such sale, and in case of sale at broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral or that portion thereof so to be sold will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Secured Party may fix in the notice of such sale. At any sale, the Collateral may be sold in one lot as an entirety or in separate parcels as Secured Party may determine. Secured Party shall not be obligated to make any sale pursuant to any such notice. Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall incur no liability in case of the failure of such purchaser to take up and pay for the Collateral so sold, and in case of any such failure, such Collateral may again be sold upon like notice. Each and every method of disposition described in this Section shall constitute disposition in a commercially reasonable manner. Debtor shall remain liable for any deficiency.

- 6.3 Debtor further agrees to do or cause to be done, to the extent that Debtor may legally do so, all such other acts and things as may be necessary to make such sales or resales of any portion or all of the Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at Debtor's expense.
- 6.4 Upon the occurrence of an Event of Default and at any time thereafter, Secured Party shall have the rights and remedies of a secured party after default under the Uniform Commercial Code as adopted in the State of Texas (the "UCC"), and in conjunction with, in addition to or in substitution for those rights and remedies, and cumulative thereof, the following rights and remedies:
- (a) Written notice mailed to Debtor as provided herein ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(b) It shall not be necessary that Secured Party take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(c) Prior to the application of proceeds of any disposition of the Collateral to the secured indebtedness, Secured Party may apply such proceeds to the reasonable expenses of retaking, holding, preparing for sale, selling and the like and reasonable attorneys' fees and legal expenses incurred by Secured Party, and Debtor shall remain liable for any deficiency; and

(d) The sale by Secured Party of less than the whole of the Collateral shall not exhaust the rights of Secured Party hereunder, and Secured Party is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the indebtedness secured hereby, this Agreement and the security interest, pledge and assignment created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and

(e) In the event any sale hereunder is not completed or is defective in the opinion of Secured Party, such sale shall not exhaust the rights of Secured Party hereunder and Secured Party shall have the right to cause a subsequent sale or sales to be made hereunder; and

(f) Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness secured hereby or as to the occurrence of any default, or as to Secured Party's having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by Secured Party, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(g) Secured Party may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Secured Party, including the sending of notices and the conduct of sale, but in the name and on behalf of Secured Party; and

(h) Without precluding any other method of sale, the sale of property shall have been made in a commercially reasonable manner if conducted in conformity with reasonable commercial practices of banks disposing of similar property, but in any event Secured Party may sell on such terms as it may

choose, without assuming any credit risk and without any obligation to advertise.

- 6.5 All remedies expressly provided for herein are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument now or hereafter securing the payment of the secured indebtedness, or any part thereof, or otherwise benefiting Secured Party, and Secured Party shall, in addition to the remedies herein provided, be entitled to avail itself of all such other remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.
- 6.6 Secured Party may resort to any security given by this Agreement or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Secured Party in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits or security interests evidenced by or granted under this Agreement.
- 6.7 To the full extent Debtor may do so, Debtor agrees that Debtor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, and Debtor, for Debtor, Debtor's heirs, devisees, executors, administrators, representatives, receivers, trustees, successors and assigns, and for any and all persons ever claiming any interest in the Collateral, to the extent permitted by law, hereby WAIVES and RELEASES all rights of redemption, valuation, appraisement, stay of execution, grace, demand, presentment for payment, notice of dishonor or default, notice of intent to accelerate, notice of acceleration, protest and notice of protest, diligence in collecting and bringing suit against Debtor or any other party liable for the secured indebtedness and all rights to a marshaling of the assets of Debtor, including the Collateral, or to a sale in inverse order of alienation in the event of foreclosure of the security interest hereby created.
- 6.8 Debtor hereby irrevocably appoints the Secured Party, effective upon the occurrence of an Event of Default, Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, Secured Party or otherwise, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may



deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation: (a) upon the occurrence of an Event of Default, and at any time thereafter for so long as the Event of Default continues, to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (b) upon the occurrence of an Event of Default, and at any time thereafter for so long as the Event of Default continues, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (a) above; and (c) upon the occurrence of an Event of Default, and at any time thereafter for so long as the Event of Default continues, to file any claims or take any action or institute any proceedings which Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Secured Party with respect to any of the Collateral.

- 6.9 Secured Party's duty with reference to the Collateral shall be solely to use reasonable care in the custody and preservation of the Collateral in Secured Party's possession. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if it takes such action for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral. Secured Party shall not be responsible in any way for any depreciation in the value of the Collateral, nor shall any duty or responsibility whatsoever rest upon Secured Party to take necessary steps to preserve rights against prior parties or to enforce collection of the Collateral by legal proceedings or otherwise, the sole duty of Secured Party, its successors and assigns, being to receive collections, remittances and payments on such Collateral as and when made and received by Secured Party, and at Secured Party's option, to apply the amount or amounts so received, after deduction of any collection costs incurred, as payment upon any of the indebtedness secured hereby or to hold the same for the account and order of Debtor. In the event Debtor instructs Secured Party, in writing or orally, to deliver any or all of the Collateral to a broker or other third person, and Secured Party agrees to do so, the following conditions shall be conclusively deemed to be a part of Secured Party's agreement, whether or not they are specifically mentioned to Debtor at the time of such agreement. Secured Party shall assume no responsibility for checking the genuineness or authenticity of any person purporting to be a messenger, employee or representative of the broker or other third person to whom Debtor has directed Secured Party to deliver the Collateral, or the genuineness or authenticity of any document or instructions delivered by any such person. Debtor will be considered, by requesting any such delivery, to have assumed all risk of loss as to the Collateral. Secured Party's sole responsibility will be

to deliver the Collateral to the person purporting to be the broker or other third person described by Debtor, or a messenger, employee or representative hereof. Secured Party and Debtor hereby expressly agree that the foregoing actions by Secured Party shall constitute reasonable care.

## SECTION VII. ADDITIONAL AGREEMENTS.

- 7.1 This Agreement and the security interests granted herein shall remain in full force and effect until such time as Secured Party shall have executed and delivered to Debtor a written termination agreement or filed with each filing officer with whom a financing statement describing the Collateral was filed, a termination statement to the effect that Secured Party no longer claims a security interest under the financing statement. In no event shall Secured Party be required to terminate the security interest hereunder or release any or all of the Collateral prior to the time that (a) the secured indebtedness shall have been paid in full and (b) all of the covenants, warranties, undertakings and agreements made by Debtor in this Agreement have been kept and duly performed. Debtor hereby WAIVES any rights under applicable law, including without limitation, Section 9.404 of the UCC, to obtain an earlier termination of the security interest hereunder or a release of the Collateral herefrom.
- 7.2 Secured Party may waive any default without waiving any other prior or subsequent default. Secured Party may remedy any default without waiving the default remedied. The failure by Secured Party to exercise any right, power or remedy upon any default shall not be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Secured Party of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No amendment, modification or waiver of any provision hereof nor consent to any departure by Debtor therefrom shall in any event be effective unless the same shall be in writing and signed by Secured Party and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Debtor in any case shall of itself entitle Debtor to any other or further notice or demand in similar or other circumstances. Acceptance by Secured Party of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default or an Event of Default hereunder.
- 7.3 Secured Party may at any time and from time to time in writing (a) waive compliance by Debtor with any covenant herein made by Debtor to the extent

and in the manner specified in such writing; (b) consent to Debtor's doing any act which Debtor is prohibited from doing hereunder, or consent to Debtor's failing to do any act which Debtor is required to do hereunder, to the extent and in the manner specified in such writing; (c) release any part of the Collateral, or any interest therein, from the effect of this Agreement; or (d) release any party liable, either directly or indirectly, for the secured indebtedness, or for any covenant herein or in any other instrument now or hereafter securing the payment of the secured indebtedness without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Secured Party hereunder or impair or release the liability of any party, except to the extent specifically agreed to by Secured Party in such writing.

- 7.4 The security interest and the other rights of Secured Party hereunder shall not be impaired by any indulgence, moratorium or release granted by Secured Party, including but not limited to (a) any renewal, extension or modification which Secured Party may grant with respect to any secured indebtedness; (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Secured Party may grant in respect of any item of the Collateral or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor, co-maker or surety of any secured indebtedness.
- 7.5 Secured party may call at Debtor's location or place or places of business at reasonable intervals to be determined by Secured Party and, without hindrance or delay, inspect, audit, check, and make copies of and extracts from books, records, journals, orders, receipts, correspondence and other data relating to the Collateral or to any transaction between Debtor and Secured Party, and Debtor shall assist Secured Party in making any such inspection.
- 7.6 At its option, Secured Party may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral, provided, that Debtor may contest in good faith and with due diligence any assessed taxes, charges, liens, and assessments provided that the proceedings brought in such contest shall suspend or stay the collection of such taxes, charges, liens or assessments and neither the Collateral nor any part thereof shall be subjected to any sale, foreclosure or forfeiture. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization, plus interest thereon from the date of such demand at a rate per annum equal to the lesser of (a) the Past Due Rate or (b) ten percent (10%).

- 7.7 A carbon, photographic or other reproduction of this Agreement or of any financing statement relating to this Agreement shall be sufficient as a financing statement.
- 7.8 Debtor will cause all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Secured Party shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.
- 7.9 In the event the ownership of the Collateral or any part thereof becomes vested in a person other than Debtor, Secured Party may, without notice to Debtor, deal with such successor or successors in interest with reference to this Agreement and to the indebtedness secured hereby in the same manner as with Debtor, without in any way vitiating or discharging Debtor's liability hereunder or on the indebtedness secured hereby; provided, however, that nothing contained in this Section 7.9 shall be construed to authorize Debtor to sell, assign, transfer or dispose of its interest in the Collateral in any manner. No sale of the Collateral, no forbearance on the part of Secured Party and no extension of the time for the payment of the indebtedness secured hereby given by Secured Party, shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Debtor hereunder or for the payment of the indebtedness secured hereby, or the liability of any other person for the payment of the indebtedness secured hereby except as expressly agreed to in writing by Secured Party.
- 7.10 To the extent that proceeds of the secured indebtedness are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Collateral, such proceeds have been advanced by Secured Party at Debtor's request, and Secured Party shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.
- 7.11 If any part of the secured indebtedness cannot be lawfully secured by this Agreement or if any part of the Collateral cannot be lawfully subject to the security interest, pledge and assignment hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Agreement.
- 7.12 Any notice, request, demand or other communication required or permitted hereunder or under any other agreement or instrument now or hereafter evidencing, guaranteeing or securing the secured indebtedness (unless

otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee against receipt therefor, or by United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, or by telegraphic, telex, facsimile or cable communication, sent to the intended addressee at the address shown in this Agreement, or to such different address as the addressee shall have designated by written notice sent in accordance herewith and actually received by the other party at least ten (10) days in advance of the date upon which such change of address shall be effective. All such notices and other communications shall, when delivered, mailed, telegraphed, telexed, transmitted or cabled, respectively, be effective when delivered in person, deposited in the mails, delivered to the telegraph company, confirmed by telex answerback, transmitted by telecopier or delivered to the cable company, respectively.

- 7.13 This Agreement shall be binding upon Debtor, and the heirs, devisees, administrators, executors, personal representatives, receivers, trustees, successors and assigns of Debtor, including all successors in interest of Debtor in and to all or any part of the Collateral, and shall inure to the benefit of Secured Party and the successors and assigns of Secured Party. All references in this Agreement to Debtor or Secured Party shall be deemed to include all such other parties.
- 7.14 Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.
- 7.15 The term "Debtor" as is used in this Agreement shall be construed as singular or plural to correspond with the number of persons executing this Agreement as Debtor. The pronouns used in this Agreement are in the neuter gender but shall be construed as feminine, masculine or neuter as occasion may require.
- 7.16 The section headings appearing in this Agreement have been inserted for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this Agreement. Unless otherwise defined herein, terms used in this Agreement which are defined in the UCC are used with the meanings as therein defined.

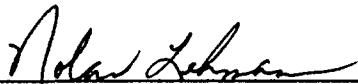
- 7.17 This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall constitute one and the same agreement.
- 7.18 **This Agreement shall be governed by and construed in accordance with and enforced under the laws of the State of Texas and the United States of America.**

**This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.**

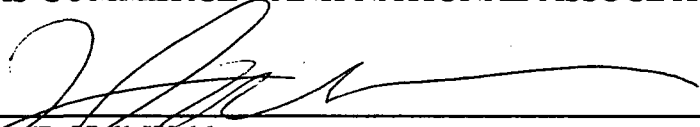
**There are no unwritten oral agreements between the parties.**

Executed to be effective as of December 28, 1992.

**DEBTOR:**

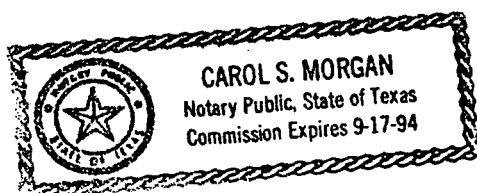
  
\_\_\_\_\_  
Nolan Lehmann

**SECURED PARTY:  
TEXAS COMMERCE BANK NATIONAL ASSOCIATION**

By:   
\_\_\_\_\_  
Name: F. Hall Webb  
Title: Senior Vice President

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

On this 28<sup>th</sup> day of December, 1992, before me, personally appeared Nolan Lehmann to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.



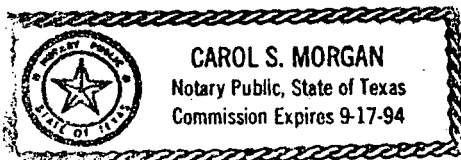
Carol Morgan  
Notary Public, State of Texas

\_\_\_\_\_  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires:

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

On this 28<sup>th</sup> day of December, 1992, before me, personally appeared F. Hall Webb, to me personally known who being by me duly sworn says that he is the Senior Vice President of Texas Commerce Bank National Association, a national banking association, that the foregoing instrument was signed by him on behalf of said association and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.



Carol Morgan  
Notary Public, State of Texas

\_\_\_\_\_  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires:



AFFIDAVIT

THE STATE OF TEXAS

COUNTY OF HARRIS

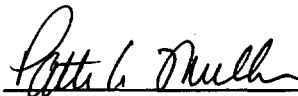
I, Carol St. Clair, do hereby certify that I have compared the copy of the Security Agreement-Tank Car dated December 28, 1992 between Nolan Lehmann and Texas Commerce Bank National Association which is attached hereto to the original of such Agreement and found the copy to be complete and identical in all respects to the original Agreement.

EXECUTED on this the 28th day of December, 1992.



Carol St. Clair, counsel for Texas  
Commerce Bank National Association

On this 28th day of December, 1992, before me personally appeared Carol L. St. Clair, to me known to be the person described in and who executed the foregoing instrument and she acknowledged that she executed the same as her free act and deed.



Notary Public in and for the State of  
Texas

My Commission Expires:

